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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/647,575	10/02/2000	Paul John Rennie	CM1737	8556

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EXAMINER

MITCHELL, TEENA KAY

ART UNIT PAPER NUMBER

3743

10

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/647,575

Applicant(s)

RENNIE, PAUL JOHN

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 11-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11-15, 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

The indicated allowability of claims 1-3, 11-15, and 20 is withdrawn in view of the newly discovered reference(s) to Noakes et.al. (4,829,996). Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noakes et.al. (6,079,634) in view of Noakes et.al. (4,829,996).**

Noakes in an electrostatic spraying apparatus discloses a spray generator (Col. 8, lines 4-18), a fluid reservoir (40) and a nosepiece (22) wherein:

- the fluid reservoir contains a pharmaceutically acceptable fluid (Col. 2, lines 6-16), the fluid comprising a pharmaceutically acceptable medicament (Col. 2, lines 6-16). and
- **the device is adapted** to produce a spray having a fluid ligament extending from the nosepiece, the ligament having a nosepiece end and a delivery end, the spray further comprising a spray cone diverging from

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the delivery end of the ligament, inasmuch as the adapted to language is not a positive claim limitation the device of Noakes is fully capable of the adapted to limitations because Noakes is an electrostatic device which produces a ligament (Col. 6, lines 56-66).

The difference between Noakes '634 is the ligament having a length of from 1 to 20 mm from the nosepiece end to the delivery end.

Noakes '996 in a spray device teaches that the length of the ligament can be changed by adjusting the voltage (Col. 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the length of the ligament from 1 to 20 mm. Inasmuch as the length of the ligament can be changed by changing of the voltage applied to the spray, one of ordinary skill in the art would be able to arrive at the specified ligament length of 1 to 20 mm, via changing the voltage to the spray as taught by Noakes.

With respect to claim 2, Noakes '634 discloses an electrostatic spray device (Abstract).

With respect to claim 3, Noakes '996 teaches, wherein a voltage having a range from about 1kV up to 10 kV is applied (Col. 6, lines 31-53).

With respect to claim 11, Noakes does not disclose wherein the spray cone has a cone angle of from about 20 to about 50°. Note rejection of claim 1 above, inasmuch as changing the voltage changes the ligament length, changing the voltage would also change the cone angle and one of ordinary skill in the art would be able to arrive at the claimed cone angle via changing the voltage.

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With respect to claim 12, note rejection of claim 11 above.

With respect to claim 13, Noakes '634 discloses wherein the device is adapted to provide a unit fluid dose with a volume having a range from about 1 to about 20  $\mu$ l (Col. 6, lines 4-15).

With respect to claim 14, Noakes '634 discloses wherein the device is adapted to provide a unit fluid dose with a volume in the range about 5 to 15  $\mu$ l (Col. 6, lines 4-15).

With respect to claim 15, Noakes '634 discloses wherein the device is adapted to provide multiple unit fluid doses (Col. 2, lines 29-62).

**Claims 17-20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ruderian (4,694,824).**

With respect to claim 17, Ruderian in a nasal spray device discloses spraying fluid into the nasal cavity without substantial penetration of the device into nostrils (Fig. 5). The claimed steps would have been obvious because they would have resulted from the use of the device of Ruderian.

With respect to claims 18 and 20, note rejections of claims 13 and 14 above.

With respect to claim 20, note rejection of claim 16 above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show spray devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-

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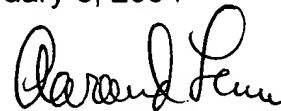
4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell  
Examiner  
Art Unit 3743  
February 8, 2004



Aaron J. Lewis  
Primary Examiner